suffering certainly occasions as much injury as physical suffering. See *Head* v. *G. P. Ry.*, 79 Ga. 358, 360, 7 S. E. 217, 11 Am. St. Rep. 434. It is now generally agreed that mental anguish when accompanied by even slight physical injury is a proper element of damages. *Simone* v. *Rhode Island Co.*, 28 R. I. 186, 66 Atl. 202, 9 L. R. A. (N. S.) 740; *Yates* v. *South Kirby, etc., Co.*, (1910) 2 K. B. 538. And there seems to be no valid reason why mental suffering alone should not give a cause of action. The fear that such a doctrine would result in excessive verdicts has not been realized, as an examination of the cases in the states allowing a recovery for mental anguish clearly shows. See *Cumberland T. & T. Co.* v. *Quigey, supra.*

DURESS—CARRIERS—REFUSAL TO CARRY CATTLE.—A carrier, whose line was the only outlet to a market for the shipper's cattle, refused to receive certain cattle for shipment until the shipper had signed a bill of lading containing a false recital that some of the cattle were received in bad condition. The cattle were injured through the negligence of the carrier, and an action was brought by the shipper for damages. *Held*, such refusal to receive cattle without a false recital in the bill of lading constitutes duress, and the contract limiting its liability is voidable. *Missouri, K. & T. Ry. Co.* v. *Pacheco* (Tex. Civ. App.), 185 S. W. 1051.

Formerly, duress at law existed only where the conditions surrounding the transaction were naturally calculated to deprive a courageous man of his free will; and the circumstances necessary to that condition were distinctly fixed by law. Under this rigorous and harsh rule of the old common law, it was possible to avoid a contract for duress only when one had been forced into the contract upon a well grounded apprehension of losing his life or limb or of imprisonment. A fear of battery or of having one's house burned or property destroyed was not duress. 2 COKE'S INST. 483. See *Edwards* v. *Handley*, Hardin (Ky.) 602, 3 Am. Dec. 745; *Hatter* v. *Greenlee*, 1 Port. (Ala.) 222, 26 Am. Dec. 370; *Harris* v. *Carmody*, 131 Mass. 51, 41 Am. Rep. 188; *Joannin* v. *Ogilvie*, 49 Minn. 564, 52 N. W. 217, 32 Am. St. Rep. 581, 16 L. R. A. 376.

The harsh rule of the old common law soon gave way to a somewhat more liberal doctrine. This doctrine was that duress existed under such circumstances as would deprive an ordinary person of his free will. Even under this rule, which was practically universal, the force or threats necessary to constitute duress—an essentially relative term, were measured by a fixed and unbending test. Accordingly, the resistance required of a weak and strong man alike was that which would be offered by a man of ordinary firmness. 2 GREENLEAF, EV., § 301; *Harmon* v. *Harmon*, 61 Me. 227, 14 Am. Rep. 556; *Morse* v. *Woodworth*, 155 Mass. 233, 29 N. E. 525; *Horton* v. *Bloedorn*, 37 Neb. 666, 56 N. W. 321.

The modern view is that duress exists wherever the injured party is actually deprived of his free will by being put in fear by the other party to the transaction and advantage is thereby taken of him. *Central Bank* v. *Copeland*, 18 Md. 305; *Eadie* v. *Slimon*, 26 N. Y. 9; *Galusha* v. *Sherman*, 105 Wis. 263, 81 N. W. 495, 47 L. R. A. 417; *Cribbs* v. *Sowles*, 87 Mich. 340, 49 N. W. 587, 24 Am. St. Rep. 166.

There are a few cases similar to the principal case which are anomalous. These cases hold that where one through the necessity of business is compelled to submit to an illegal demand by a person or corporation having the power to refuse a right to which he is entitled, the parties are not on equal footing, and contracts made under circumstances are affected with duress. *McGregor* v. *Erie Ry. Co.*, 35 N. J. L. 89; *Chase* v. *Dwinal*, 7 Me. 134; *W. Va. Transportation Co.* v. *Sweetzer*, 25 W. Va. 434.

EVIDENCE — ADMISSIBILITY — UNCONSTITUTIONAL SEIZURE. — The police seized books and papers belonging to the accused, without warrant or authority; and, although he promptly demanded their return, they were held by the authorities for several years. Subsequently, the accused was convicted of a crime, on evidence obtained from such books and papers. *Held*, the conviction is reversed. *Flagg* v. *United States* (C. C. A.), 233 Fed. 481. See NOTES, p. 59.

EVIDENCE — STRIKING OUT — EFFECT. — In a trial for statutory rape, evidence calculated to greatly damage the defendant's case was erroneously admitted, but later withdrawn, and the jury was instructed not to consider it. The preponderance of the legitimate evidence clearly established the defendant's guilt; and the jury assessed the very lowest penalty allowed by the law. *Held*, the defendant was not prejudiced by the error in admitting the evidence, and the conviction is affirmed. *Miller* v. *State* (Tex. Cr. App.), 185 S. W. 29. See NOTES, p. 54.

FEDERAL EMPLOYERS' LIABILITY ACT—ACTION IN STATE COURT—JURY.—An action was brought under the Federal Employers' Act, and in the court of a state which by statute provided for a jury of seven. *Held*, the Seventh Amendment of the Constitution of the United States does not apply to actions under the Act in state courts, and the action may be tried by a jury of seven. *Chesapeake & O. R. Co.* v. *Carnahan*, 36 Sup. Ct. Rep. 594. See also, *Minneapolis & St. L. R. Co.* v. *Bombolis*, 36 Sup. Ct. Rep. 595. For principles involved, see 3 VA. L. REV. 312.

INSURANCE—STANDARD MORTGAGEE CLAUSE—CONSTRUCTION.—A building was insured by materialmen in the name of the owner; but, by means of a "rider" attached to the policy, the loss was made payable to them as their interest might appear. The policy also contained a standard mortgagee clause providing that the conditions of the policy should apply to the payee "in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended thereto." There was no provision attached to the "rider" declaring in what manner the conditions should apply to the materialmen. After a condition of the policy had been violated by the owner, a loss occurred and the materialmen sued the insurance company. *Held*, the plaintiffs can recover. *Royal Ins. Co.* v. *Walker Lumber Co.* (Wyo.), 155 Pac. 1101.

Where one procures insurance in his own name but assigns the pol-